Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on Antigua and Barbuda in the absence of a report*

1. In the absence of the initial report of the State party, the Committee against Torture considered the status of implementation of the Convention in Antigua and Barbuda at its 1543rd and 1545th meetings (see CAT/C/SR.1543 and 1545), held on 24 and 25 July 2017. In accordance with rule 67, paragraph 3, of the Committee's rules of procedure, the Committee notified the State party that it intended to examine the measures taken to protect or give effect to the rights recognized in the Convention in the absence of a report and to adopt concluding observations. The Committee discussed information obtained from national and international sources, including other United Nations mechanisms, and adopted the present concluding observations at its 1563rd meeting, held on 8 August 2017.

A. Introduction

2. Antigua and Barbuda acceded to the Convention on 19 July 1993. The State party was under an obligation to submit its initial report under article 19 (1) of the Convention by 17 August 1994. Each year thereafter, Antigua and Barbuda was included in the list of States parties with overdue reports in the annual report which the Committee submits to the States parties and the General Assembly. By a letter dated 10 December 2015, the Committee reminded the State party about the overdue initial report and the possibility for the Committee to proceed with a review in the absence of a report as a result of the extended delay in its submission. In the same letter, the Committee also invited the State party to accept the simplified reporting procedure to assist it in preparing its overdue report. On 15 August 2016, the Committee informed the State party of the possibility of reviewing the situation in the State party in the absence of a report at its sixty-first session, in accordance with rule 67, paragraph 3, of its rules of procedure. By a letter dated 18 December 2016, the Committee informed the State party that it would proceed with the review in the absence of a report at its sixty-first session. The State party never responded to these communications. On 15 May and 9 June 2017, reminders were sent offering the State party the possibility of participation by a delegation via video conference. On 21 June, a representative of the Ministry of Justice and Legal Affairs of Antigua and Barbuda stated in her email correspondence with the Secretariat that the Government would participate in the review via videoconference. From 30 June until the beginning of the sixty-first session, the secretariat of the Committee made numerous requests for a test for a video conference to be carried out prior to the dialogue. The State party did not respond to any of the requests. In his letter dated 19 July 2017, the Chair of the Committee requested the State party to confirm its continued commitment to its participation in the country review and promptly arrange a test for a video conference. In email communications dated 19 and 20 July, the

* Adopted by the Committee at its sixty-first session (24 July-11 August 2017).

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representative of the State party responded that she was not authorized to give such a commitment.

3. On 24 and 25 July 2017, the State party, without notice, did not attend the dialogue with the Committee. The Committee takes note of the written replies to some of its questions and concerns that it received from the State party on 7 August, the day on which the concluding observations on the implementation of the Convention in Antigua and Barbuda were considered.

4. The Committee regrets that the State party has failed to meet its reporting obligations under article 19 of the Convention for 23 years, which precluded the Committee from assessing the implementation of the Convention by the State party on the basis of the Government's report.

5. Notwithstanding the commitments made by the State party during the 2016 universal periodic review of the Human Rights Council to seek technical assistance from the Office of the United Nations High Commissioner for Human Rights in meeting its international human rights obligations (see A/HRC/33/13, para. 76), the Committee regrets that the State party has not sought such assistance.

B. Positive aspects

6. The Committee welcomes the ratification of or accession to the following international instruments by the State party since its accession to the Convention:

(a) The Convention on the Rights of the Child, on 5 October 1993;

(b) The Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, on 7 September 1995;

(c) The Rome Statute of the International Criminal Court, on 18 June 2001;

(d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 30 April 2002;

(e) The Convention on the Rights of Persons with Disabilities, on 7 January 2016.

7. The Committee also welcomes in particular the following legislative measures taken by the State party to give effect to the Convention:

(a) The Suppression of Torture Act, No. 15 of 1993;

(b) The Migrant Smuggling (Prevention) (Amendment) Act, No. 12 of 2015, which amends the Migrant Smuggling (Prevention) Act, No. 11 of 2010;

(c) The Trafficking in Persons (Prevention) (Amendment) Act, No. 13 of 2015, which amends the Trafficking in Persons (Prevention) Act, No. 12 of 2010;

(d) The Child Justice Act, No. 23 of 2015;

(e) The Children (Care and Adoption) Act, No. 24 of 2015;

(f) The Domestic Violence Act, No. 27 of 2015.

8. The Committee notes the following initiatives taken by the State party to amend its policies and procedures to afford greater protection of human rights and to apply the Convention in particular:

(a) The adoption of a national action plan to end gender-based violence (2013-2018);

(b) The development of a national action plan on the prevention of trafficking in persons (2016-2018);

(c) The establishment in 2008 of the Sexual Offences Unit in the police force;

(d) The establishment in 2015 of an ad hoc eligibility committee to review asylum applications, in partnership with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross of Antigua and Barbuda.

C. Principal subjects of concern and recommendations

Definition of torture

9. While noting that the Suppression of Torture Act 1993 and the Constitution prohibit acts of torture, the Committee is concerned that the definition of torture in the Act fails to incorporate all the elements, including the purposes, set out in article 1 of the Convention. The Committee is also concerned that there is no express provision establishing that the crime of torture is not subject to a statute of limitations (arts. 1 and 4).

10. **The Committee calls on the State party to amend the Suppression of Torture Act 1993 to include all the elements of the definition set out in article 1 of the Convention. The State party should ensure that there is no statute of limitations for the crime of torture.**

Direct application of the Convention by domestic courts

11. The Committee is concerned about the lack of information on the direct application of the Convention by the domestic courts and on the actual practice, and on cases where the Convention has been directly applied by the domestic courts (arts. 2 and 12).

12. **The State party should ensure that the provisions of the Convention are fully applicable in the national legal order. It should also provide information about specific cases in which the Convention has been invoked before the domestic courts. It should provide judicial officials and lawyers with specific training on applying the Convention directly and asserting the rights established in those provisions before the courts.**

Absolute prohibition of torture

13. The Committee is concerned that article 72 of the Criminal Procedure Act provides for the possibility of extinction of criminal responsibility through pardon without excluding its application to a crime of torture (art. 2).

14. **Recalling its general comments No. 2 (2008) on the implementation of article 2 and No. 3 (2012) on the implementation of article 14, the Committee reiterates that amnesty provisions or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability of the prohibition of torture and contribute to a climate of impunity. The State party should amend the relevant legal provisions to expressly indicate that, where torture is concerned, it shall be inadmissible to grant amnesty or pardon.**

Superior orders and due obedience

15. The Committee is concerned that article 3 of the Suppression of Torture Act 1993 allows a person charged with the crime of torture to use as a defence that s/he had a lawful justification or excuse under domestic laws, without excluding the invocation of a superior order as a justification of torture, as stated in the Convention (art. 2).

16. **In the light of article 2 (3) of the Convention and the Committee's general comment No. 2, the State party should guarantee, in law and in practice, the right of all law enforcement officials and military personnel to refuse to execute, as subordinates, an order from their superior officers that would contravene the Convention. It should expressly indicate in its domestic legislation that, in full conformity with article 2 (3) of the Convention, the execution of such a superior order is not accepted as a justification for acts of torture. It should also establish an**

appropriate mechanism to protect a subordinate from reprisal if he or she refuses to carry out such an order.

Fundamental legal safeguards

17. The Committee takes note of the procedural safeguards set out in the Constitution and the Criminal Procedure Act, in particular the right of detainees to access a lawyer of their choice, to be informed of the reason for their arrest or detention and to be brought before a magistrate within 48 hours of detention. It remains concerned, however, that in practice, many persons are held in custody beyond 96 hours, free legal aid is provided only in murder cases and interpretation services are unavailable until the individual is charged. It is also concerned that there is no provision guaranteeing that detained persons have the right to promptly contact a relative or a person of their choice and to request and receive an independent medical examination from the outset of the deprivation of liberty (art. 2).

18. **The State party should:**

(a) **Afford all detainees, in law and in practice, all fundamental legal safeguards from the outset of the deprivation of liberty, including the right to promptly access a lawyer, free of charge in the case of indigent persons; to receive free interpretation services; to notify a relative or other person of their choice about the detention or arrest; to be heard by a magistrate within 48 hours of detention; and to request and receive a medical examination by an independent doctor, which should be conducted out of the hearing and sight of public officials;**

(b) **Promptly record all deprivations of liberty in a comprehensive national detention register;**

(c) **Systematically monitor the compliance of all public officials with the legal safeguards and penalize any failure on the part of officials to comply;**

(d) **Inform the Committee of the number of complaints received in regard to the failure to respect such safeguards and on the outcome of those complaints.**

Administration of justice and prolonged pretrial detention

19. The Committee is concerned at consistent reports indicating that a serious backlog of criminal court cases has resulted in prolonged pretrial detentions of up to five years. It regrets the lack of information, owing to the absence of a State party report, on the measures taken to deal with the backlog or to reduce the duration of pretrial detention (art. 2).

20. **The State party should take measures to alleviate the backlog of criminal cases, including by increasing judicial capacity, in particular the number of magistrates. It should ensure, in law and in practice, that pretrial detention is used only in exceptional circumstances and for limited periods and should promote alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).**

Conditions of detention

21. The Committee is concerned about the extreme overcrowding at Her Majesty's Prison, the sole prison facility in the State party, and regrets that the prison population has nearly doubled since 2000. While noting the State party's efforts to use alternative measures such as parole and pardons, subject to certain terms, the Committee regrets the lack of information, owing to the absence of a State party report, on the impact of such measures in practice. The Committee is further concerned at the material conditions of the prison, including the inadequate levels of sanitation and ventilation, the lack of running water and proper toilets and the recent outbreak of infectious diseases, which led to the cancellation of rehabilitative courses. It also notes with concern that the health care, particularly for prisoners with psychosocial disabilities, is insufficient. It is also concerned about allegations of ill-treatment and sexual violence in the prison and regrets the lack of further information on the existing complaint mechanism in the prison (art. 11).

22. **The State party should take measures to bring the operational procedures in the prison into compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights in 2008. In particular, it should:**

(a) **Reduce the level of overcrowding, including by increasing detention capacity and using alternatives to imprisonment in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Promptly improve material conditions in detention facilities, including with regard to the temperature and ventilation in prison cells, and guarantee prisoners access to adequate food and running water;**

(c) **Provide adequate health services to prisoners, particularly those with psychosocial disabilities, and conduct a thorough and independent medical examination of all detainees, both at the outset of detention and on a regular basis throughout the duration of detention;**

(d) **Ensure that prisoners are able to file a complaint with an independent body regarding their conditions of detention and/or torture and ill-treatment, including sexual violence, and that such complaints are promptly, impartially and thoroughly investigated.**

Alleged police brutality

23. The Committee is concerned at allegations of police brutality against arrested and detained persons. The Committee is deeply concerned at reports of physical abuse against foreign nationals at St. John's police station. While noting the establishment of the Professional Standards Department within the police force to handle complaints against the police, the Committee remains concerned about the absence of a fully independent mechanism to receive and act on such complaints (arts. 12 and 13).

24. **The State party should ensure that:**

(a) **Measures are taken to strengthen the oversight of the police force, particularly with regard to the treatment of persons in custody;**

(b) **All complaints of police brutality and excessive use of force are promptly and thoroughly investigated in an impartial manner by a fully independent body; that there is no institutional or hierarchical connection between investigators and alleged perpetrators; and that those accused are prosecuted and, if found guilty, sentenced to penalties proportionate to the gravity of their acts;**

(c) **The authorities launch investigations on their own initiative whenever there are reasonable grounds to believe that an act of police brutality or excessive use of force has been committed;**

(d) **Alleged perpetrators of police brutality or excessive use of force are immediately suspended from duty during the investigations in order to prevent reprisals or obstruction of investigations, while also ensuring that the principle of presumption of innocence is observed.**

National human rights institution

25. The Committee is concerned at the limited mandate of and insufficient resources allocated to the existing Office of the Ombudsman. It regrets the lack of information, owing to the absence of a State party report, on steps taken to implement the recommendation accepted by the State party at the universal periodic review in 2016 (see A/HRC/33/13, para. 76) to establish a national human rights institution in accordance with the principles relating

to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

26. **The State party should strengthen the mandate of the Office of the Ombudsman, particularly with regard to handling complaints of torture and ill-treatment, and allocate sufficient resources for its independent operation. Furthermore, it should ensure the establishment of a national human rights institution in full compliance with the Paris Principles.**

Refugees and non-refoulement

27. The Committee expresses concern at the absence of domestic legislation or administrative regulations governing asylum procedures and the rights of refugees. The Committee is concerned at the 2015 report by UNHCR that 15 Syrian asylum seekers were detained and threatened with removal despite their expressed fear of return. While noting that an ad hoc eligibility committee, established in 2015, recommended granting asylum to these Syrian nationals, the Committee is concerned that this committee's recommendations have reportedly not been given legal effect (art. 3).

28. **The State party should:**

(a) **Adopt domestic asylum and refugee legislation that is consistent with international standards and is in full compliance with article 3 of the Convention, and ensure that procedural safeguards against refoulement are in place;**

(b) **Establish an asylum procedure that allows for an individualized assessment of each case to be carried out;**

(c) **Develop a screening process to identify, as early as possible, vulnerable persons such as victims of torture and trafficking and provide them with medical and psychological examinations, priority access to the asylum determination procedure and appropriate treatment;**

(d) **Formalize the mandate and authority of the ad hoc eligibility committee with a view to giving the necessary legal effect to its recommendations;**

(e) **Provide the Committee with disaggregated information on the number of successful asylum applications in relation to the total number of requests and on the cases of refoulement and expulsions, including where applicants expressed their fear of torture upon return;**

(f) **Consider acceding to the Convention on the Reduction of Statelessness of 1961, as recommended by the Committee on the Rights of the Child (see CRC/C/ATG/CO/2-4, para. 56).**

Detention of asylum seekers and other migrants

29. The Committee is concerned about the State party's practice of detaining migrants and asylum seekers even in cases where they have entered and remained lawfully in the country with valid identity documents and have never been in conflict with the law. The Committee also regrets the lack of information, owing to the absence of a State party report, on the immigrants detained at the immigrant detention and removal centre at St. John's police station for breach of labour and immigration laws (arts. 11 and 16).

30. **The State party should refrain from detaining refugees, asylum seekers and undocumented migrants for prolonged periods, especially when they are not charged with any offence under the law; use detention only as a measure of last resort and for as short a period as possible; and promote alternatives to detention.**

Universal jurisdiction

31. The Committee is concerned at the lack of clarity regarding the legal provisions enabling the State party to establish universal jurisdiction over the crime of torture. The Committee also regrets the lack of information on how the State party has exercised in

practice its jurisdiction over cases of torture in compliance with article 5 of the Convention (art. 5).

32. **The State party should ensure the exercise of universal jurisdiction over persons responsible for acts of torture. It should also provide information to the Committee on instances in which the Convention has been invoked in judicial decisions regarding extradition and universal jurisdiction, in accordance with article 5 of the Convention.**

Inadmissibility of statements made as a result of torture

33. The Committee is concerned at the absence of an express provision in domestic legislation establishing that evidence obtained through torture or cruel, inhuman or degrading treatment is inadmissible (art. 15).

34. **The Committee urges the State party to ensure, in law and in practice, that any statement resulting from torture is not invoked as evidence, and provide necessary training to the law enforcement and judiciary officials.**

Juvenile justice

35. While welcoming the adoption of the Child Justice Act 2015, the Committee is concerned that the minimum age of criminal responsibility is 8 years old and that the only alternative to conviction and imprisonment of juveniles is probation. The Committee is concerned at reports that juveniles are not detained separately from adults and regrets the lack of information on the State party's plan to establish a separate detention facility for juveniles, as mentioned during the universal periodic review in 2016 (see A/HRC/33/13, para. 22) (art. 11).

36. **The State party should amend the Child Justice Act 2015 to increase the minimum age of criminal responsibility. It should also use alternative measures to conviction and imprisonment for juveniles and ensure that imprisonment is used only as a measure of last resort for the shortest appropriate period of time, and is in accordance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), as recommended by the Committee on the Rights of the Child (see CRC/C/ATG/CO/2-4, para. 57). It should also inform the Committee of the current arrangements for the detention for juveniles, including with regard to the separation of juveniles from adults in any detention facility.**

Violence against women, including domestic and sexual violence

37. While commending the adoption of the Domestic Violence Act 2015 and the establishment of the Sexual Offences Unit within the police, the Committee remains concerned at the wide prevalence of violence against women, including domestic and sexual violence. It is deeply concerned about reports that two 13-year-old girls were sexually assaulted by police officers in October 2016. The Committee notes with concern that the Sexual Offences Act 1995 does not recognize rape within marriage except under limited circumstances and that numerous cases of violence against women perpetrated by their spouses remain unpunished (arts. 2, 12, 13 and 16).

38. **The Committee urges the State party to:**

(a) **Ensure that all cases of violence against women, including domestic and sexual violence, are registered by the police and promptly, thoroughly and impartially investigated and that those accused are prosecuted and, if found guilty, punished with sanctions proportionate to the gravity of their acts;**

(b) **Amend the Sexual Offences Act 1995 to include marital rape, defined as non-consensual sexual relations between spouses, as a specific criminal offence with appropriate sanctions;**

(c) **Provide specialized training for law enforcement and judicial officials on dealing with cases of violence against women, including sexual violence against children, as well as on identifying and providing redress to victims;**

(d) **Ensure that victims of violence against women, including child victims, obtain appropriate redress, including medical and legal services, as set out in the Committee's general comment No. 3.**

Corporal punishment

39. The Committee is concerned that provisions in the Corporal Punishment Act 1949 and the Prison Act 1956 permit flogging for breach of prison discipline. While noting that corporal punishment of children is prohibited under the Child Justice Act 2015 as a sentence for a crime, the Committee regrets that corporal punishment is lawfully administered at home and in schools, day-care settings and penal institutions (art. 16).

40. **The Committee calls on the State party to explicitly prohibit corporal punishment in all settings and to repeal all the provisions in domestic legislation that permit corporal punishment in any setting.**

Trafficking in persons and forced labour

41. While welcoming the amendment in 2015 to the Trafficking in Persons (Prevention) Act 2010, the Committee is concerned at the absence of prosecutions and convictions under this law, and regrets that trafficking for sexual exploitation and forced domestic labour remains widely prevalent (arts. 2, 12 and 16).

42. **The Committee urges the State party to:**

(a) **Effectively implement the anti-trafficking legislation to combat human trafficking and forced labour;**

(b) **Ensure that all allegations of trafficking are promptly, thoroughly and impartially investigated; that those accused are prosecuted and, if found guilty, punished with sanctions proportionate to the gravity of their acts; and that victims have access to all forms of redress;**

(c) **Provide specialized training to law enforcement and judicial officials on the investigation of trafficking and on victim identification procedures, including among asylum seekers.**

Death penalty

43. While noting that the State party announced at the 2016 universal periodic review the possibility of declaring a moratorium or a similar gesture with regard to the execution of the death penalty (see A/HRC/33/13, para. 65), the Committee regrets the lack of information, owing to the absence of a State party report, on relevant measures taken by the State party on this subject (art. 16).

44. **The Committee calls on the State party to take the necessary steps to declare a formal moratorium on the death penalty, with a view to its abolition.**

Training

45. The Committee is concerned at the absence of training for law enforcement personnel and other public officials involved in work with persons deprived of their liberty, asylum seekers and migrants on the provisions of the Convention. It also notes with concern the lack of training for medical doctors and other medical personnel on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the absence of specific methodologies to evaluate the effectiveness and impact of the training provided (arts. 2, 10 and 16).

46. **The State party should ensure that law enforcement personnel and other public officials involved in work with persons deprived of their liberty, asylum seekers and migrants participate in training on the provisions of the Convention. It should also ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals in particular and that the training includes programmes on**

non-coercive investigation techniques. The State party should develop and implement specific methodologies to assess the effectiveness and impact of such training.

Data collection

47. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, as well as violence against women and human trafficking (arts. 2, 12, 13 and 16).

48. **The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel, violence against women and human trafficking, as well as on means of redress, including compensation and rehabilitation provided to victims.**

Follow-up procedure

49. The Committee requests the State party to provide, by 11 August 2018, information on follow-up to the Committee's recommendations contained in paragraphs 18, 22, 26, 28 (b), (c), (d), (e) and (f) and 38 (a), (c) and (d). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

50. The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention.

51. The Committee invites the State party to consider ratifying the Optional Protocol to the Convention as soon as possible.

52. The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet party.

53. The State party is invited to submit its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

54. The Committee requests the State party to disseminate widely the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

55. The Committee calls upon the State party to comply with its reporting obligations under article 19 of the Convention and to submit its report, which will be considered its second, by 11 August 2021. To that end, the Committee invites the State party to agree, by 11 August 2018, to prepare its report under the simplified reporting procedure, whereby the Committee will transmit to the State party a list of issues prior to reporting. The State party's response to that list of issues will constitute its next periodic report under article 19 of the Convention.